

(b)(6)



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-H-A-

DATE: SEPT. 16, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a civil engineer, seeks classification as a member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In his appeal, the Petitioner argues that he satisfies the national interest waiver requirements and that the Director's decision did not address all of the evidence submitted or the use of the Petitioner's research by [redacted]

Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General¹ may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (NYS DOT), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6.

¹ Pursuant to section 1517 of the Homeland Security Act of 2002 (“HSA”), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Director determined that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest. The Petitioner's work involves developing tools that will assist in more accurately forecasting precipitation and managing water resources. We agree with the Director that the Petitioner has established that his work is in an area of substantial intrinsic merit and is national in scope. Thus, the only finding at issue in this matter is whether he established sufficient influence on his field to meet the third prong of the *NYSDOT* national interest analysis.

At the time of filing this petition, the Petitioner was working as a postdoctoral associate at the [REDACTED] at [REDACTED]

The Petitioner indicated that his research is focused on retrieving root-zone soil moisture from P-band radar measurements and that he has developed a new polarimetric retrieval algorithm to better understand water resources and the hydrologic cycle. The Director determined that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis. As stated above, the analysis set forth in *NYSDOT* requires a petitioner to demonstrate that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. To do this, a petitioner must establish "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Id.* at 219, n. 6.

The Petitioner submitted evidence reflecting that his research is being directly implemented by [REDACTED] mission. As described by the Petitioner, this is a five-year project aimed at using a [REDACTED] aircraft fitted with the [REDACTED] synthetic aperture radar to collect soil moisture data from nine climatic habitats in North America to estimate how much carbon the continent is taking in or releasing into the atmosphere. The principal investigator for [REDACTED] mission,

[REDACTED] confirms the Beneficiary's critical contributions to the mission.

He explains:

[The Petitioner's] new algorithms are being used to effectively reduce the uncertainty of root zone soil moisture measurements to improve our understanding of the carbon exchange in the ecosystem and the overall health of the North American Ecosystem. Simply put, his methods and algorithms are ground-breaking in the sense that they improve [REDACTED] ability to make the measurements, below the surface of the Earth and through vegetation, in ways which dramatically improve the certainty or accuracy of the estimates. Through the use of his methods and algorithms in the [REDACTED] project, we can obtain more accurate root zone soil moisture estimates than ever before leading to a better understanding of carbon exchange and our environment.

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Research scientist, [REDACTED]

[REDACTED] affirms that the Petitioner's research "has had a direct impact on our research efforts at [REDACTED] and the [REDACTED]. According to [REDACTED] "Remotely-sensed soil moisture provides more spatially and temporally extensive data than in situ observations. However, satellites can only measure water in the top few centimeters of the soil. Root zone soil moisture is a more important metric . . ." He explains that the [REDACTED] uses radar to collect soil moisture data from nine climatic habitats in North America for estimates of carbon [the] continent releases into the atmosphere. Carbon dioxide has an important influence on climate, and the [REDACTED] results will help to improve the accuracy of climate projections for the next 50-100 years by measuring root-zone moisture." He further stated that the Petitioner's "research is important for the next generation of remotely sensed precipitation estimates and for this reason his research is of particular interest to [REDACTED] and [REDACTED] for application to some of our current projects . . ."

Others concur that the Petitioner's research has been significant. For example, [REDACTED]

[REDACTED] indicates that the Petitioner's research "has led to first-of-their-kind improvements to new models and algorithms in precipitation records and data."

[REDACTED] testifies that the Petitioner's research "is critical" to the success of the [REDACTED] mission and filled a void that other researchers have been previously unable to fill. [REDACTED] director of the [REDACTED]

[REDACTED] at the [REDACTED] stated that the Petitioner's "research efforts are helpful to our group in accomplishing our research mission" and his "improved methods of resolving uncertainties in precipitation are the reason we are using them."

The direct use of the Petitioner's work by [REDACTED] and its [REDACTED] as well as by other researchers, is persuasive evidence that the Petitioner's work has substantially impacted the field as a whole. The Petitioner submitted additional evidence consisting of his published work, including two book chapters, and conference presentations. The record sufficiently demonstrates that the Petitioner has had a degree of influence on the field as a whole. We therefore find that the Petitioner's past record of achievement justifies a projection that he will serve the national interest to a significantly greater degree than would an available U.S. worker having the same minimum qualifications.

III. CONCLUSION

As discussed above, the record demonstrates that the benefit of retaining this Petitioner's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the Petitioner has established that a waiver of the requirement of a job offer, and thus of a labor certification, will be in the national interest of the United States.

It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otieno*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has met that burden.

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ORDER: The appeal is sustained.

Cite as *Matter of S-H-A-*, 18325 (AAO Sept. 16, 2016)